IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2025 of 1999
Date of Decision : 05.10.2007

Jaspal Singh .....Appellant

versus

Joginder Singh and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.G.S.Gandhi, Advocate for the appellant.
Mr.R.S.Ghuman, Advocate for the respondents.

-.-

JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for mandatory and permanent injunction in respect of the property shown `red' in the site plan, was decreed by the Courts below.

It is the case of the plaintiff-respondent that the property in dispute is ancestral property and he is in possession of the same at his own right. The defendant, on the other hand, asserted that Durga Dass, father of defendant No.3 was the owner in possession of the house constructed on the site in question. Defendant No.3 inherited the house built by Durga Dass and entered into an agreement to sell the same to defendant No.1 on 12.4.1990 and delivered the possession after receiving the consideration and thus, the defendant is in possession in pursuance of the agreement of sale executed by the heirs of Durga Dass.

Both the Courts below have returned a concurrent finding that the plaintiff has failed to prove ancestral nature of the property. The Courts found that vide sale deed Exhibit DW-5/1, the wife of the plaintiff has purchased the property in dispute. The Courts also held that the defendant has failed to prove the title of his vendor Durga Dass, on the basis of which alone Durga Dass or his heirs could enter into an agreement of sale dated 12.4.1990.

Learned counsel for the appellant has vehemently argued that the property which has been purchased by the wife of the plaintiff vide sale deed Exhibit DW-5/1 is materially different then the property involved in the suit. Reference is made to the site plan, Exhibit P-1, wherein the boundaries of the site on the Western and Southern side do not tally with the description of the property in the sale deed and, thus, it is contended that the finding recorded by the learned Courts below is based on misreading of evidence.

The said aspect has been considered by the learned First Appellate Court. It has been found that in the sale deed Exhibit DW-5/1, there is recital of existence of a Well. Such Well is admitted to be in existence in the property possessed by Jaspal Singh DW-2. Similar admission has been made by Kidar Nath DW-3 in his cross examination. Thus, it was found that the property conveyed by plaintiff in the sale deed Exhibit DW-5/1 and that described in site plan Exhibit P-1 are the same. Still further, it has been found that the defendant has not been able to prove the execution of the agreement dated 12.4.1990 and also the title of his vendors.

The findings recorded by the Courts below are the findings of fact based on proper appreciation of evidence. Even after going through the evidence on record, I do not find that the findings recorded by the Courts below suffer from any patent illegality or irregularity which may give rise to any substantial question of law for consideration of this Court in second appeal.

Consequently, the present appeal stands dismissed.

05-10-2007 (HEMANT GUPTA)
*mohinder JUDGE